

MARK J. DAVIS

IBLA 70-540

Decided February 25, 1971

Rules of Practice: Appeals: Dismissal

An appeal to the Director, Bureau of Land Management, from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

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IBLA 70-540 :

Wyoming 0313116

MARK J. DAVIS

: Oil and gas lease terminated

: Appeal dismissed conditionally

DECISION

Mark J. Davis has appealed to the Director, Bureau of Land Management, 1/ from a decision dated April 6, 1970, whereby the Wyoming land office declared that noncompetitive oil and gas lease Wyoming 0303116 had terminated automatically by operation of law for failure to pay timely the advance rental in full for the lease year commencing on January 1, 1966. The record shows that the lease recited an area of 2,479.09 acres, but it was found that the lease actually embraced 2,519.09 acres. Rental for each lease year of the lease had been paid on the basis of the incorrect acreage. Payment of the total deficient rental has been made.

Subsequent to the land office action appealed from in this case, section 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(c) (1964), was amended by Public Law 91-245, approved May 12, 1970, to read as follows:

Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if --

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. . . .

Proposed regulations to implement Public Law 91-245 were published at 36 F.R. 2871 (February 11, 1971).

In order to afford the appellant the opportunity to petition for reinstatement of the subject lease in accordance with Public Law 91-245, it is appropriate to dismiss the appeal at this time, subject to the condition that if any petition for reinstatement which may be filed should be finally denied, the appellant may reinstate this appeal as a matter of right.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the appeal is dismissed subject to the conditions stated, and the case remanded to the Bureau of Land Management for further appropriate consideration of any petition for reinstatement of the lease which may be submitted to the Wyoming land office.

Newton Frishberg, Chairman

We concur:

Martin Ritvo, Member

Francis Mayhue, Member

